

JOHN D. O'KEEFE (ON RECONSIDERATION)

IBLA 83-868

Decided August 12, 1985

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CA MC 67272 through CA MC 67275, CA MC 67634, CA MC 67697, CA MC 67698, CA MC 69779, CA MC 70205 through CA MC 70207, CA MC 72834, CA MC 76438 through CA MC 76440, CA MC 76443, and CA MC 76449 through CA MC 76541.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Evidence: Presumptions -- Mining Claims: Abandonment

Failure to file instruments required by 43 U.S.C. § 1744 (1982) and 43 CFR 3833.2 in the proper BLM office within the time period prescribed results in a conclusive presumption of abandonment of the mining claim. The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced documents filed with them is rebuttable by probative evidence to the contrary. The presumption is not overcome by a statement, without corroborating evidence, that a document was mailed.

APPEARANCES: John D. O'Keefe, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

John D. O'Keefe appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated June 28, 1983, which declared 19 mining claims abandoned and void because a notice of intention to hold or proof of annual assessment work for each claim had not been timely filed with BLM for the 1981 assessment year. The appeal was dismissed by order of this Board dated October 21, 1983, for failure to submit a statement of reasons pursuant to 43 CFR 4.412. On November 28, 1983, appellant submitted a petition for reconsideration of the decision dismissing his appeal. On May 8, 1984, consideration of mining claim recordation appeals was suspended pending consideration of United States v. Locke, No. 83-1394, by the United States Supreme Court. On April 1, 1985, a decision was rendered in that case, United States v. Locke, 105 S. Ct. 1785 (1985), and O'Keefe's petition again became subject to review.

Reconsideration of a Board decision may be granted only where extraordinary circumstances and sufficient reason exist. 43 CFR 4.21(c). The departmental regulation establishing appeal procedure before this Board,

43 CFR 4.412(a), requires a statement of reasons in support of the appeal be received "within 30 days after the notice of appeal was filed," if the notice of appeal did not include such reasons. O'Keefe's notice of appeal reads: "The notices were forwarded along with our other assessment work notices (which you recorded) in one package." The Departmental regulation setting forth procedures for an appeal to the Board of Land Appeals, 43 CFR Subpart E, does not require reasons for appeal to be stated with any particular formality or legal correctness. Appellant's statement understandably states an argument which, if correct, establishes a basis for recognition of the continued validity of his claim. Accordingly, reconsideration is granted; the appeal is entitled to consideration on its merits. See Wyoming Oil & Minerals, Inc. (On Reconsideration), 71 IBLA 15 (1983).

By its decision dated June 28, 1983, BLM notified O'Keefe the following mining claims were declared abandoned and void for failure to submit evidence of assessment work or notice to hold for the 1981 assessment year: CA MC 67272 through CA MC 67275, CA MC 67634, CA MC 67697, CA MC 67698, CA MC 69779, CA MC 70205 through CA MC 70207, CA MC 72834, CA MC 76438 through CA MC 76440, CA MC 76443, and CA MC 76449 through CA MC 76451. The record indicates his apparent failure to file required documents was detected by BLM after notices of assessment work for the 1982 assessment year were submitted by O'Keefe for the subject claims on December 20, 1982. The claims had been quitclaimed to O'Keefe on August 22, 1982, by Lon Martin, the original locator. The record reflects both Martin and O'Keefe filed notices of assessment work with BLM in 1981 for some of the claims conveyed to O'Keefe. However, copies of recorded assessment work notices for the 19 claims at issue, required to be received by BLM prior to December 31, 1981, do not appear of record. Attached to O'Keefe's appeal were copies of assessment work notices for some of the claims in dispute which show they were recorded in Plumas County, California, in 1981; 1/ but those copies do not show proof of their receipt by BLM before April 10, 1983.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), requires the owner of an unpatented mining claim located after October 21, 1976, to file with BLM, on or before December 30 of each year following the year in which the claim is located, an affidavit of assessment work performed or a notice of intent to hold the claim. See also 43 CFR 3833.2-1. Since the 19 claims at issue were located in 1980, proofs of labor or notices of intent were required annually from the owner beginning in 1981. Congress intended in section 314(c) to extinguish claims recorded with BLM for which timely annual filings are not made. Failure to timely file either proof of labor or notice of intent will result, under the statute, in conclusive presumption of abandonment by the owner; intent is irrelevant if the annual filing deadline is not complied with. United States v. Locke, supra at 1796; James Boatman, 87 IBLA 31 (1985). Moreover, filing of required evidence only in the local recording office does not constitute compliance with the statutory requirement that it be filed with BLM. See Edmund J. Cowan, 76 IBLA 257 (1983); C. G. Rhinehart,

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1/ O'Keefe's appeal was accompanied by copies of assessment work notices, recorded in the Plumas County recorder's offices, for CA MC 67272 through CA MC 67274, CA MC 67634, CA MC 67698, and CA MC 70205 through CA MC 70207.

76 IBLA 228 (1983). The Department has no authority to waive or excuse noncompliance with the statute. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant claims the required 1981 affidavits were submitted, but the record does not show BLM timely received the documents. It is the responsibility of the owner of an unpatented mining claim to comply with the recording requirements and to ensure that all required filings are duly submitted. James Boatman, *supra*; John R. Welborn, 87 IBLA 20 (1985). The regulations define "file" in this situation to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.0-5(m). Moreover, depositing a document in the mails does not constitute filing. *Id.* Appellant's arguments imply BLM may have "misplaced" the transmitted copies of the affidavits. However, a legal presumption of administrative regularity supports the official acts of public officers in the proper discharge of their duties. Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); John R. Welborn, *supra* at 21. In James Boatman, *supra* at 33, we stated:

When an appellant maintains that a document was sent to BLM, but BLM has no record of it, the presumption of regularity works against a finding that BLM received the document and subsequently lost it through mishandling. Glenn W. Gallagher, 66 IBLA 49, 51 (1982). Although the Board has held that the presumption of regularity may be rebutted, *e.g.*, Bruce L. Baker, 55 IBLA 55 (1981); L. E. Garrison, 52 IBLA 131 (1981), the presumption is not overcome by a statement that a missing document was mailed to BLM.

See Wilson v. Hodel, 758 F.2d 1369 (10th Cir. 1985). Although appellant is able to produce evidence that affidavits of assessment were filed with the local recorder for some of the claims, there is no probative evidence to establish copies of the affidavits were timely filed with BLM.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

Franklin D. Arness  
Administrative Judge

We concur:

Wm. Philip Horton  
Chief Administrative Judge

Bruce R. Harris  
Administrative Judge

